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**BAB Working Paper No 1: 2012**

**ISSN 1422-8769 © The author © Basler Afrika Bibliographien**

**Presented at the Basler Afrika Bibliographien, Basel**

**29 May 2012**

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# The Indicatorisation of South African Land Restitution

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This paper investigates the social life of settlement statistics in South African land restitution that have recently come to be interpreted, and contested, as indicators of state performance. Based on an overview on the legal and institutional set-up of the ongoing land restitution process in South Africa, the text focuses on the shifting relevance of restitution's settlement statistics, leading to their deliberate transformation into indicators of state performance. While this development has led to a remarkable success by the numbers in dramatically reducing the outstanding claims still to be settled, the paper goes on to highlight worrying inconsistencies in the actual figures, unpacks some of the local complexities that escape simple quantification and discusses unintended consequences of indicatorisation, which, taken together, rather seem to point to a failure by the numbers. While acknowledging some of the substantial criticism aired against the indicatorisation of settlement statistics, the text finally discusses these figures as boundary objects that make possible in the first place the translation of various concerns and the switching of codes between claim-specific settings and the national arena of land reform. Emphasising autopoietic self-correction within the rational-legal logic of modern statehood, the text concludes that indicatorisation, at least in the case of South African land restitution, has indeed both increased state performance and made visible and processible, for the state and the public alike, worrying deficiencies that still persist.

*Government and public opinion have mainly measured the achievements of restitution quantitatively in terms of the number of claims settled and people who have benefitted, and the extent of land restored to claimants.*

*Ruth Hall [2010:28]*

## Introduction

On 30 March 2011, the South African Department of Rural Development and Land Reform presented its "Draft Annual Performance Plan: 2011-2012" to the Parliamentary Portfolio Committee on Rural Development and Land Reform. When referring to its land restitution programme, the presentation indicated the "purpose" of this programme to consist in the provision of settlement of land restitution claims under the *Restitution of Land Rights Act* (Act 22 of 1994) and of settlement support to restitution beneficiaries, further highlighting as "key priorities" the reduction of the backlog of land claims and the settlement of all outstanding land claims [Department of Rural Development and Land Reform 2011a:29]. The presentation went on to project in a table its annual targets for backlog claims to be implemented (360 claims) and for new outstanding claims to be settled (90 claims) [Department of Rural Development and Land Reform 2011a:30]. The title of the table column, containing these numbers, read: "Performance indicator".

We are increasingly living in a world of indicators. Indicators are statistical measures used to consolidate and standardise complex data into a simple number or rank that is meaningful to policy makers and the public [Merry 2011:S86]. Thus constituting knowledge technologies of quantification, they are more and more propagated as allowing for new forms of “evidence-based” governance at national, transnational and international levels [Davis/Kingsbury/Merry 2010; Merry 2011]. Embedded in epistemic environments that appeal to “new governance” characterised by participation, flexibility, data-based monitoring and evaluation within an overarching “audit culture” [Power 1997; Strathern 2000], this recent upsurge of indicators is arguably based on a migration of basic technologies of corporate management and control into the realm of the state and civil society [Merry 2011:S90-S92]. As a form of governance, indicators induce those subject to their measures to take responsibility for their own actions. They are meant to lead to forms of self-discipline and self-regulation that can be easily read and monitored from the outside, hence contributing to an increase in public accountability. Thus both reflecting and shaping the world they purport to measure, indicators constitute a world of their own – one, about which, as Sally Engle Merry and others have recently argued [Davis/Kingsbury/Merry 2010:1; Merry 2011:S85], relatively little is actually known. Hence contributing to an emergent ethnography of indicators, this paper investigates the social life of settlement statistics in South African land restitution, as they have come to be interpreted as contested indicators of state performance.

In order to do so, the paper first gives a brief overview on the legal and institutional set-up of the ongoing land restitution process in South Africa. Against this background, it focuses on the shifting relevance of restitution’s settlement statistics, leading to their conscious transformation into explicit indicators of state performance in a move that has paralleled recent global trends towards achieving more public accountability through indicatorisation. While this development has seemingly led to a remarkable success by the numbers in dramatically reducing the outstanding claims still to be settled, the next section highlights the contested nature of settlement statistics as performance indicators. It refers to worrying inconsistencies in the numbers themselves, unpacks some of the local complexities that escape simple quantification and discusses unintended consequences of indicatorisation, which, taken together, rather seem to point to a failure by the numbers. While acknowledging some of the substantial criticism aired against the indicatorisation of

settlement statistics in South Africa, the text moves on to discuss these figures as boundary objects that make possible in the first place the translation of various concerns and the switching of codes between claim-specific settings and the national arena of land reform. Emphasising autopoietic self-correction within the rational-legal logic of modern statehood, the text finally argues that indicatorisation, at least in the case of South African land restitution, has indeed both increased state performance and made visible and processible, for the state and the public alike, worrying deficiencies that still persist.

### **The Institutional Set-up of South African Land Restitution**

The current process in South Africa of restituting rights in land that had been dispossessed on the basis of racially discriminatory laws originated during the negotiations of the South African transition to post-Apartheid democracy in the early 1990s, when restitution constituted one of the contested issues, as it directly affected the existing property regime benefitting the then still ruling white minority. After prolonged and intense debates leading to the *Interim Constitution of the Republic of South Africa* (Act 200 of 1993), a balanced constitutional protection of both property rights and the right to redress for racially based violations of past property rights emerged as a strategic compromise, which was also enshrined in the current *Constitution of the Republic of South Africa* (Act 108 of 1996) with only minor modifications [Chaskalson 1994: 131–2 and 1995; Klug 2000: 124–36; Spitz/Chaskalson 2000: 313–29; Walker 2008: 50–69].

Thus section 25(7) of the current constitution stipulates that a person or community dispossessed of property after 19 June 1913<sup>1</sup> as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an act of parliament, either to restitution of that property or to equitable redress. The act of parliament in question – the *Restitution of Land Rights Act* (Act 22 of 1994) – defines the legal framework for the actual restitution process and provides in section 2(1) a set of criteria, according to which claimants are entitled to restitution. The claimant can either be an individual (or a direct descendant) or a community (or part of a community), whose rights in land were derived from shared rules determining access to land held in common by such group. The claimant had to be

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<sup>1</sup> This was the day of the promulgation of the *Natives Land Act* (Act 27 of 1913), first legalising massive dispossessions country-wide by introducing racial zones of possible landownership and by restricting black reserves to only 7 per cent of South African land (later to be extend to 13 per cent).

dispossessed of a right in land after 19 June 1913 because of racially discriminatory laws and practices. Finally, claimants should not have received just and equitable compensation as contemplated in the current constitution for the dispossession at issue and had to lodge their claim before 31 December 1998. Significantly, restitution was explicitly not limited to former freehold ownership of land. Instead, the right in land to be restituted was defined quite broadly in section 1 of the Restitution Act, including unregistered interests of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question.<sup>2</sup> The Restitution Act further established as its key players the “Commission on Restitution of Land Rights”, including the “Chief Land Claims Commissioner” and the “Regional Land Claims Commissioners” under the ambit of the Department of Land Affairs (renamed Department of Rural Development and Land Reform in 2009), and the “Land Claims Court”, which took up their work in 1995 and 1996, respectively [Walker 2008:5-9].

Since then, commission officials have *prima facie* validated, gazetted and verified land claims, and then mediated between claimants and (usually) white landowners in order to settle on a largely market-oriented agreement whereby the state buys the land and, based on certain conditions, hands it over to the claimants. Originally, the Land Claims Court was established to grant restitution orders for all cases and to determine the conditions that must be met before land rights can be restored. As discussed below, however, owing to the slow process of handling claims, amendments to the Restitution Act have been made, shifting the approach from a judicial to an administrative one in 1999. Now the minister, and by delegation the land claims commissioners, have the power to facilitate and conclude settlements by agreement, and only claims that cannot be resolved this way take the judicial route through the Land Claims Court. This also entails the possibility of expropriation – an option that is also constitutionally enshrined [Hellum/Derman 2009: 128–31].

Since the inception of the restitution process, the total numbers of all lodged claims as well as the figures slowly shifting from “outstanding” to “settled claims” have played an important role. Apart from informing the internal work of the commission itself, these settlement statistics have also constituted an integral part of the annual reports, which the

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<sup>2</sup> These and other criteria or tests for specific entitlements to restitution have been further developed through jurisprudence. On the important role of the courts in defining the scope of restitution, which is often ignored in the literature on South African land restitution, see Mostert [2010] and Zenker [2011].

commission is obliged to submit to Parliament according to Section 21 of the Restitution Act, and subsequently makes accessible to the public. While these numbers have thus been compiled and worked upon for a long time, it is only since recent years that they are explicitly referred to in terms of “performance indicators”. The *White Paper on South African Land Policy* abstractly referred already in 1997 to the need to develop “service standards with clearly defined outputs, targets and performance indicators”, when discussing the envisioned transformation of service delivery [Department of Land Affairs 1997: para 6.5.2]. However, it was only in the Department of Land Affairs overall *Annual Report 2006/2007*, as well as in all its subsequent annual reports, that the settlement statistics for land restitution were explicitly referred to in terms of “performance indicators” [Department of Land Affairs 2007a:55]. Correspondingly, the land claims commission’s own *Strategic Review Plan 2007-2008* began referring to the number of settled land claims as an “indicator of success” for the purpose of monitoring and evaluation [Commission on Restitution of Land Rights 2007b:14]. Thus in the current *Annual Report 2010/11*, it has become standard procedure to refer to the number of claims settled in terms of “output performance measures/service delivery indicators” and to use these figures to retrospectively measure actual performance against target performance [Commission on Restitution of Land Rights 2011:12]. It is to this process of increasingly indicatorising South African land restitution by more and more using settlement statistics as explicit measures of state performance that I turn now.

### **National Settlement Statistics as Indicators of State Performance**

During the first term of the Commission on Restitution of Land Rights from 1995 until 2000, the state had to accomplish a number of challenging tasks and learn some difficult lessons. The commission had to establish its national and regional offices, solicit claims, set up systems to register and investigate them and finally refer each one of them to the equally newly founded Land Claims Court for finalisation [Hall 2010:26]. Cherryl Walker, who had been a land rights activist since the late 1970s and came to serve as the first Regional Land Claims Commissioner for KwaZulu-Natal, recalls the “inauspicious beginnings in 1995 in borrowed offices, initially without staff or telephones or even files” as well as “the excitement of the earliest, painfully secured settlements and the deluge of claims that

descended as the cut-off date for lodging claims (31 December 1998) approached” [Walker 2008:12].

The actual task itself, however, of identifying and settling all valid claims turned out to be much more demanding than had initially been imagined. At the first working session of the commission on 6 March 1995, the then Minister of Land Affairs Derek Hanekom projected that “[t]hree years from now the Commission will be rounding off its operation and we pray that its mission would have been successfully accomplished” [quoted after Walker 2008:8]. Yet this 1998 deadline for finalising the work of the commission proved to be too optimistic and had to be extended. Thus in its 1997 *White Paper on South African Land Policy*, the Department of Land Affairs shifted its deadlines for the restitution process, now providing for a three-year period for the lodgement of claims (from 1 May 1995), a five-year period for the commission and the court to finalise all claims and a ten-year period for the implementation of all court orders [Department of Land Affairs 1997: para 4.13]. Later, the final deadline for lodging claims was extended to 31 December 1998 and a “Stake Your Claim” campaign was lodged with NGOs and church bodies to increase awareness for the possibility to lodge land claims [Hall 2010:22, 26]. However, the deadlines for finalising all claims proved elusive again. Thus, while in 2002 President Mbeki announced 2005 as the year when all claims would be settled, this deadline was again shifted back in March 2005 to March 2008 [Walker 2008:21]. In 2008, the deadline for finalising all claims was reset for 2011 [Walker 2008:21, 205], but in 2010, the commission declared 2012 to be its target for winding up the restitution process [Commission on Restitution of Land Rights 2010:13]. Currently, in its *Strategic Plan 2011-2014*, the Department of Rural Development and Land Reform still foresees financial involvement with restitution by the financial year 2013/14 [Department of Rural Development and Land Reform 2011b:48, 65] and there is little reason to believe that by then, the whole restitution process will be finally completed.

These moving targets have been directly linked to the sobering experiences of the frustratingly slow progress of settling land claims. Especially during the first few years, the track record of settling land claims was anything but promising: in 1997, the very first claim was settled by the court and it remained the only one for that whole year; in 1998, the total number of settled claims rose to 7, climbing to a total of 41 settled claims in 1999 (see figure 1). Given that tens of thousands of lodged claims – itself a shifting figure as we will see below – awaited their finalisation in the file storage rooms of the commission, settling claims



at this rate would have taken a few thousand years, as Ruth Hall dryly observes [Hall 2010:27]. It was against this backdrop that the minister ordered a review in 1998 of the restitution programme in order to identify areas of critical intervention [du Toit et al. 1998]. This led to marked changes in the process, including the above-mentioned amendment of the Restitution Act, which changed the formerly judicial to the current administrative approach to restitution: whereas before, each and every case had to be adjudicated by the Land Claims Court, now the minister, or by delegation land claims commissioners, have the power to settle claims by agreement and only contested cases are referred to the court. Furthermore, in 1999 the commission became more closely integrated into the Department of Land Affairs (DLA) and the Chief Land Claims Commissioner was replaced, as was the Minister of Land Affairs under the new Mbeki administration. Under the helm of the new Minister Thoko Didiza, the government's land reform priorities became reoriented in early 2000 [Walker 2008:13]. This policy reorientation has been described as a shift from an overtly pro-poor, rights-based approach to one prioritising property rights and the production of a class of black commercial farmers, which led to a major exodus of senior staff in the Department of Land Affairs in 1999-2000 [James 2007:36-40; Walker 2008:12-14].

According to Deborah James [2007:40], many of these leaving staff members were English-speaking white activists on the left, who were frustrated by what they saw as a move away from the government's original land reform objective of securing livelihoods for the poor. However, as James elaborates,

[a] somewhat different position is enunciated if one speaks to those, mostly black, or white Afrikaans-speaking, officials who remained within the DLA's employ after 1999. They counter the interpretation that the DLA, in prioritising aspirant property owners and in shifting from its earlier emphasis on the poor, has been motivated by a desire to reinforce existing privilege. Pointing to the DLA's poor record at delivering land between 1994 and 1999, and to the fact that many poor people who *were* settled on the land under redistribution were merely "dumped" there, without support, in a manner reminiscent of the apartheid removals, they claim that the new approach is more pragmatic and realistic and has a greater chance of success. [James 2007:40]

This shift within the overall land reform programme towards more "pragmatism" and "realism" became also reflected in a growing emphasis on service delivery and accountability regarding land restitution, as reflected in the settlement statistics. This reorientation showed its effects: between March 1999 and April 2000 the number of settled land claims rocketed from a mere 41 to a total of 3,916 settled claims, and substantially grew by impressive annual settlement rates over the next years (see figure 1). Thus, as Walker [2008:21] notes,

“[f]rom being regarded as a serious liability for the ANC’s land reform programme when Didiza replaced Hanekom as Minister of Land Affairs in 1999, by 2003 land restitution was emerging as its star performer”.

Numbers, as of date	Total of claims lodged	Urban %	Rural %	Claims settled <sup>3</sup> per year	Total of claims settled	Claims dismissed per year	Backlog claims finalised per year	Total of outstanding claims
March 1996	7,095	70	30	-	-	-	-	7,095
March 1997	14,298	81	19	1	1	43	n/a	14,254
March 1998	24,516	84	16	6	7	57	n/a	24,452
March 1999	63,455	≥80	≤20	32	41	42	n/a	63,372
April 2000	63,455	n/a	n/a	3,875	3,916	n/a	n/a	59,539
March 2001	68,878	72	28	8,178	12,094	293	n/a	56,491
March 2002	68,878	72	28	17,783	29,877	48	n/a	38,953
March 2003	79,694	n/a	n/a	6,609	36,489	n/a	n/a	43,205
March 2004	79,696	n/a	n/a	11,432	48,825	n/a	n/a	30,871
March 2005	79,696	n/a	n/a	10,634	59,345	n/a	n/a	20,351
March 2006	79,696	n/a	n/a	10,842	71,645	n/a	n/a	8,051
March 2007	79,696	82	18	2,772	74,417	n/a	n/a	5,279
March 2008	79,696	82	18	330	74,747	n/a	n/a	4,949
March 2009	79,696	82	18	545	75,400	108	n/a	4,296
March 2010	79,696	82	18	131	75,844	98	n/a	3,852
March 2011	79,696	82	18	714	76,023	257	1,318	3,673
<b>Sources:</b> Commission on Restitution of Land Rights 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007a, 2008, 2009, 2010, 2011 and Department of Rural Development and Land Reform 2011b.								

**Figure 1: Official Settlement Statistics of South African Land Restitution**

However, not only the annual numbers for settled claims rose over the years. The overall figure for lodged claims also proved to constitute a shifting terrain on which to manoeuvre. In the early years, the total number of claims naturally grew, when more and more people submitted their claim forms, as the cut-off date for lodgement (31 December 1998) approached. But even afterwards, the overall figure continued to increase until it stabilised into a total of 79, 696 claims since 2004 (see figure 1). On the one hand, this was the case, because the different provincial offices of the commission had to work through the massive numbers of claim forms, gain an overview of and count *prima facie* valid claims. On the other hand, the total of lodged claims has also continued to change due to the very processing of

<sup>3</sup> From the *Annual Report 2008/2009* onwards, the total and/or per annum numbers of settled claims also include “dismissed claims”.

land claims itself. In some cases, competing claims for the same land have been consolidated and fused into a single community or group claim. More often, however, the processing of group claims has led to fission, splitting such claims into separately counted claims of individual rights-holders or claimants desiring different outcomes of claims (e.g. restoration of land or financial compensation) [Hall 2010:28-29]. This process is nicely summarised by the land claims commission in its *Annual Report 2002/03*:

The Claims Validation Campaign revealed that a large number of claim forms lodged were in fact in respect of a number of land parcels/land rights lost. In the West Bank claim in East London for example, only 800 claim forms were lodged and registered whilst the analysis of the land rights lost confirmed that in fact there were 2 032 claims. This has been true with most of the urban claims. This has resulted in the increase in the number of claim forms lodged of 68 878 to the valid claims of 79 694. The validation campaign also revealed that there were competing (duplicate) claims in some provinces and this has led to the decrease in the number of claims in those provinces. This duplication resulted from the rush to lodge claims before the closing date where different people from the same community lodged a claim in respect of the same property. Such claims were common in rural areas and we have since consolidated them. [Commission on Restitution of Land Rights 2003:20]

Against the backdrop of these shifting overall numbers for lodged claims, the commission has made substantial progress in settling claims since the early 2000s: between March 1999 and March 2007, the annual rate for settling claims moved between a minimum of 2,772 claims (in 2006/07) and an impressive maximum of 17,783 (in 2001/02), adding up to a total of 74,417 claims reported as settled in March 2007, i.e. 93.38 per cent of the total of 79,696 lodged claims. In that year, the commission also reported to be “entering the most difficult part of the restitution process”, since it was now only left with outstanding rural claims that are often very complex and quite difficult to resolve [Commission on Restitution of Land Rights 2007a:3]. Correspondingly, the rates have substantially decreased to only a reported few hundred claims settled *per annum* since 2007 (see figure 1). Nevertheless, the total number of only 3,673 outstanding claims, as reported in March 2011, seems to point to a considerable success in terms of state performance over the past decade.

This success by the numbers has been paralleled, if not made possible, by an increasing emphasis on numbers and settlement statistics as actual indicators of state performance. As described above, the land claims commission and the overarching Department of (then still) Land Affairs have started since 2007 to make explicit and persistent reference to settlement statistics in terms of “performance indicators”. This shift towards an increased importance attached to numbers rather than other forms of representing and analysing the restitution process can be further traced in the transformed ways, in which the commission has

presented its own work to both parliament and the public in its annual reports. While some form of quantified information has been included in annual reports right from the beginning, its relative weight and importance has drastically grown. Thus, even though the first annual reports of the commission did already contain a few spreadsheets on the numbers of lodged claims, and since 1998 also on settled claims, the vast majority of pages contained extensive narratives of particular cases as well as descriptions of challenges and strategies devised to overcome them [see e.g. Commission on Restitution of Land Rights 1996, 1997, 1998, 1999, 2000]. By telling contrast, the current *Annual Report 2010/11* contains only 9 sparsely covered text pages at the beginning of the report that are followed by 18 pages of nothing but settlement statistics, in which the numbers of settled claims are explicitly depicted as “output performance measures/service delivery indicators” [Commission on Restitution of Land Rights 2011:12].

This profoundly increased importance of settlement statistics as explicit indicators of state performance also became evident in my conversations and interviews with officials working at the land claims commission. Thus Isaac Peter, the acting director of the legal unit at the commission’s national office, confirmed that “now, when the minister wants to give a report on restitution, he is more going to talk on statistics than talking about individual claims as we used to do in the past, when we talked about one project and raised issues of this one project. Now, the emphasis is on statistics.”<sup>4</sup> Themba Ntombela, another officer within the land claims commission, further elaborated on this point:

There has been a major shift in how we report things and how we outline what we do. We learn from being in the commission and doing the work we do. These things are bringing a lot of heat on us, when we don’t indicate how many claims we are settling. When we just issue a statement saying “there is a celebration, a handover”, people will take note of the handover. But they want to know how many claims are being settled. When you come to parliament, the questions point to indicators, they want numbers. “Why do you want so much of money? How many claims are you settling?” So that is how the shift [has been], we are starting to give them numbers now. “With the money that you give us, this is what we are doing this year. This is what we will do next year”. That’s why we have now indicators, to say: “in a year, we are aiming at settling so many with the money that you are giving us”. Because we are trying to create a connection between the money granted and the work done. Even at the legal unit, we are starting to see a shift now, to say, “instead of just moving things to court, try and settle these things”. I mean, after there’s a deadlock being declared, you come in as legal to say, “wait, wait, before you go to court, even in court, can’t we settle this in any other form?” This thinking now is shaped by the fact that we see a lot of things happening in court. Sometimes in court we are told, “get out and try and settle this thing.” Then you ask yourself, “but don’t we have lawyers that would have seen this option at the very end of the deadlock before the court proceedings?” So our whole mindset and our whole work is now taking account of what is seen to be the questions raised, “how many claims are you settling? What are you doing with the money? Why are you taking so long? Why are you continuously

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<sup>4</sup> Interview with Isaac Peter, acting director of the legal unit at the national office of the Commission on Restitution of Land Rights, on 5 September 2011.

getting shifts in deadlines?” So, we are shaped by what cabinet and parliament and the general public are starting to ask.<sup>5</sup>

As this all shows, a profound indicatorisation of South African land restitution has taken place over the past decade, in which a growing emphasis on settlement statistics has been accompanied by an impressive acceleration in the actual settlement of land claims, dramatically reducing the number of claims that are still outstanding. Indicatorisation, it seems, has thus indeed led to a remarkable success by the numbers.

### **Unpacking the National Numbers**

This gospel of indicatorisation and success by the numbers has, of course, not gone unchallenged. To begin with, worrying inconsistencies regarding the national numbers have been noted. Thus if one compares the figures given in successive years (see figure 1), they do not necessarily add up to the proclaimed total of settled claims provided at a given point of time. For instance, in March 2004, 11,432 claims were reported as settled in the past year. If one adds these to the total of settled claims reported in March 2003 (36,489), however, one ends up with a new total of 47,921 settled claims rather than with the 48,825 reported in March 2004. One of the reasons provided by the commission for such inconsistencies consists in the fact that “the Database of Settled Restitution Claims is on an ongoing basis subjected to internal auditing” [Commission on Restitution of Land Rights 2004:44], which also retrospectively leads to changes in the figures for lodged, settled and outstanding claims. However, other inconsistencies remain. Thus, for instance, the *Annual Report 2001/2002* actually reports 2 differing figures (17,918 and 17,783) for settled claims for that very year within the same report [Commission on Restitution of Land Rights 2002:8, 12]. Furthermore, it remains highly opaque whether dismissed claims have actually been excluded or included into the overall number of settled claims (see figure 1). Other irregularities concerning the numbers are also discussed by Walker with regard to figures for land restoration in Mpumalanga Province, which are possibly related to fraud and corruption [Walker 2008:206-207]. On 13 April 2011, the South African newspaper *Business Report* published an article on “Data on land reform faulty”, in which the director-general of the Department of Rural Development and Land Reform, Mduduzi Shabane, was reported

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<sup>5</sup> Interview with Themba Ntombela, legal officer at the national office of the Commission on Restitution of Land Rights, on 5 September 2011.

stating that “the department had realised at the end of May last year [2010] that the information it had could not be verified and the figures published in its annual report had no basis”; Shabane further explained that the existing figures “remained the official figures until the department had concluded its ‘massive information management project’, under which it would assess claim forms and the status of claims at land claim offices nationwide.”

Besides such problems regarding the reliability of settlement statistics, the deeper issue of the ambiguous meanings of a “settled claim” further complicates the restitution process. According to the *Annual Report 2001/02*, a “settled restitution claim” is defined as a “[c]laim that has been resolved with a signed Section 42D submission [i.e. by ministerial approval of an agreement reached between the interested parties] or a Land Claims Court order.” This contrasts starkly with an actually “finalised restitution claim”, which refers to a “claim that has been brought to completion with the transfer of land / funds to the relevant beneficiaries, i.e. all actions pertaining to a specific claim has been dealt with” [Commission on Restitution of Land Rights 2002:81]. In other words, when a claim is counted as being “settled”, it has not necessarily been finalised yet in terms of acquiring the land from the former (usually white) landowners and transferring it to the beneficiaries or providing alternative remedy to the claimants. As a matter of fact, the commission only recently started making a distinction between outstanding claims to be settled and the backlog of already settled claims still in need to be finalised, as, for instance, in the presentation to the Parliamentary Portfolio Committee on Rural Development and Land Reform on 30 March 2011, mentioned at the very beginning of this text. Thus while an impressive 76,023 claims were reported as settled in March 2011 (see figure 1), of these 18,297 claims still need to be finalised, hence constituting a considerable backlog for many years to come [Department of Rural Development and Land Reform 2011b:40].

One might further ask, as Cherryl Waker [2008:209-211] does, whether speaking of “settled claims” is of any real relevance for assessing actual state performance in the restitution process, since the success or failure of settled claims as well as the disjuncture between numbers of claims and of actual beneficiaries (each individual claimant counts as one claim, whereas huge community claims often only count as one claim) obscure what is really happening on the ground. Take, for example, the case I have been studying of a number of competing claims on the so-called “Kafferskraal” farm in Mpumalanga Province, which were mostly consolidated in the late 1990s into one community claim of Ndzundza-

Ndebele people represented by an elected land claims committee.<sup>6</sup> The white owner of one portion, after initial opposition, accepted the validity of the claim and eventually sold his portion in 2002, whereas the white owners of the other two portions contested the validity, leading to a referral of the case to the Land Claims Court in 2000. The Land Claims Court ordered in 2002 that the claim was valid, among others, because it had not been excluded on the basis of past just and equitable compensation in form of the reserve lands to which the claimants had been removed, and that the community was thus entitled to restitution of that land. The white owners challenged this judgment at the Supreme Court of Appeal. The Supreme Court, again, principally confirmed the validity of the claim in 2005. However, regarding the question of whether the claim was excluded due to just and equitable compensation in the past, the Supreme Court of Appeal found that the Land Claims Court had erred and thus ordered that the issue of past compensation be remitted to the Land Claims Court for further consideration. In the light of having lost their overall appeal, the white owners decided not to pursue the case any further to the level of the Constitutional Court. Instead, they reached a settlement with the claimants that was made an order by the Land Claims Court in 2006, in which all parties consented to the transfer of the two remaining “Kafferskraal” portions on the following principal condition: “that the value of the rights in land that the community had in respect of the farm Kafferskraal 181 JS prior to dispossession, and the compensation, if any, that the community received as a result of the dispossession of such rights, shall be taken into account”<sup>7</sup> when the outstanding claims by the same community regarding 16 neighbouring farms (some portions of which are also owned by the same white land owners) are being adjudicated by the Land Claims Court. Protracted negotiations about the actual price to be paid for these two portions caused further delays, until an agreement was reached between the state and the owners in May 2009. However, the state did not have the money to immediately buy these portions (thus causing backlog), which led to additional court procedures, ultimately resulting in the state to pay for these two portions in May and June 2010. Meanwhile, an internal conflict developed within the claimant community about the issue whether the elected committee

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<sup>6</sup> See Zenker [2011] for a detailed account of the “Kafferskraal” case in the context of discussing South African land restitution in terms of a transition to justice and “transitional justice”.

<sup>7</sup> See para 2.3 in the settlement agreement, attached as Annexure X to the unreported judgment of the LCC, *in re Ndebele-Ndzundza Community regarding the farm Kafferskraal 181 JS*, Case No. LCC 03/2000, 21 August 2006.

or the Ndebele Tribal Authority, which had also lodged a land claim on its own that was apparently not properly consolidated in the late 1990s, rightfully represents the community.

This rather complex and effectively unresolved case, in which the elected committee as of the time of writing (May 2012) only holds the title deed of the first portion, has been variously reported as “settled” by the land claims commission. Thus in its *Annual Report 2002/03*, the commission reported on the settlement and handover celebration of the first portion to the Ndzundza-Ndebele: “On 12 November 2002, about 400 claimant households received land in the Groblersdal district, comprising 2,321.3459 hectares. The land will be used for commercial agriculture and for tourism ventures. The value of the claim is R2,5million” [Commission on Restitution of Land Rights 2003:18]. However, the title deed for this portion was handed over to the community only later in 2003, and apart from keeping some cattle, no other economic activity has actually been happening on the farm. In its *Annual Report 2009/10*, the commission then reported on Kafferskraal again, stating that the Minister for Rural Development and Land Reform had expropriated portions 2 and 3 of the farm “Kafferskraal” in the Mpumalanga Province [Commission on Restitution of Land Rights 2010:61]. But the money and effective handover of the land only occurred much later in 2010, and the beneficiaries still await the deed transfer from the government. When I recently talked to commission officials working on the claim on “Kafferskraal” and surrounding farms, I was told that, given the conflict with the Ndebele Tribal Authority, the commission was now intent to actually start all over again with this claim – although it had already twice reported it as “settled”. Given land claim cases like this, Walker is surely right in emphasising that many land claims are haunted by complexities that escape simple quantification in the form of settlement statistics.

Apart from shady figures and such local complexities on the ground, the described indicatorisation of settlement statistics has furthermore developed a social life of its own, producing unintended consequences with, in fact, adverse effects for the meaningful finalisation of the land restitution process. Due to indicatorisation, the pressure on the commission has substantially increased to settle as many claims as possible in the shortest possible time. This has led to a prioritisation of rather easy-to-solve cases, mainly urban claims, the bulk of which were settled through financial compensation in form of Standard Settlement Offers (SSOs) that did not require the separate valuation of each claim [Hall 2010:27]. Derided by some as “checkbook” restitution, as Hall notes, this relatively rapid



settlement of urban claims has involved “overwhelming pressure on urban claimants to accept standard cash payouts that bear no relation to the value of what was lost or its current market value. The result is that restitution has made few inroads into the tenacious geography of apartheid that continues to shape our cities” [Hall 2010:33]. Such a prioritisation has also kept the actual restoration of land at a rather low level and thus contributed little towards the overall land reform goal of transferring white owned land to black farmers. Furthermore, pushing complicated claims towards the back of the queue has allowed their complexities and intricacies to grow continuously, which makes their settlement even more challenging in the present (the claims on the farms surrounding “Kafferskraal” is a good illustration of this process).

Another problem that has been arguably aggravated by indicatorisation is the, at times, hasty and premature settlement of cases without properly taking all competing claimants into account in a documented way. This is what apparently happened in the “Kafferskraal” case, where the Ndebele Tribal Authority claims to have been left out, which now leads to a substantial revision of claims that were already documented twice as “settled”. Such reopening and potential court cases, in which such conflicts have to be adjudicated, in fact cause claims to take much longer for their finalisation than would have been the case, had they been properly investigated and consolidated in the first place.

A somewhat related problem of a too hasty settlement has emerged due to the fact that the commission has settled claims with sale agreements stating an accepted price at the time of settlement, without being able to immediately acquire the land. The created backlog has sometimes caused claims to end up in the Land Claims Court, not because the landowners actually oppose the validity of the claim, but merely because, several years down the road with massively increased land prices, the owners feel they cannot accept the original price of the agreement anymore as this will prevent them from buying a comparable farm in order to continue farming. Such backlogs thus create massive additional costs, compared to the original settlement, both in terms of the actual price the state ultimately has to pay in compensation for the land and for the costs of the additional court hearings.

Another unintended consequence of emphasising the merely temporal nature of the commission’s work and of the pressure, generated through indicatorisation, to close the commission down soon has been a rather high staff turnover. This tendency has been further fuelled by the fact that until 2008, most commission officials were only employed on

contracts with considerable insecurity as to renewals of employment. The staff turnover this created hit the commission particularly hard, since the investigation of land claims often takes several years, and much of an official's intimate knowledge of a claim can only be superficially reflected in written form in the claim files, which means that when this official leaves, much knowledge is lost. According to Peter Ntshoe, an official who has worked for the commission since 1997, the increased pressures over the past years to settle more claims has also negatively impacted on the quality of research by the commission.<sup>8</sup> The above-mentioned poor quality of the actual numbers contained in the commission's settlement statistics can, though only in part, also be attributed to increased pressures on the commission to be held accountable by means of settlement statistics as performance indicators. Thus, as Walker observes with regard to the poor quality of data and insufficient monitoring capacities, these can partially be

explained by the very pressure on the Commission to deliver macro-level results that demonstrate that claims are being settled on a great scale and land is being restored to "the people": not enough resources are devoted to rigorous data collection and management, while official performance is valued more highly in terms of the quantity than the quality of throughput. The combination of weak information systems and relatively high staff turnover also means that general institutional and individual project memory is thin. [Walker 2008:206]

Given the discussed difficulties with existing settlement statistics, quantification's principal problem of leaving out so much of the marked specificity of each land claim and, finally, the characterised adverse effects that indicatorisation has had in actually obstructing South African land restitution, critics have pointed out that the promise of improving service delivery through indicatorisation has, in fact, turned into a self-defeating prophecy. According to Walker, South African land restitution is haunted by a disjuncture between "what the aggregate numbers purport to say about land reform at the national level and what the settlement of actual claims has achieved on the ground" [Walker 2008:22]. She also notes a discrepancy between the symbolic importance attached to the "land question" at the national level of political rhetoric and "the low level of actual commitment that the state has demonstrated for land reform in practice since 1994, particularly at project level" [Walker 2008:19]. Walker thus questions the adequacy of target deadlines and settlement statistics as the most significant measures of success, arguing that

the political emphasis on such national numbers detracts from the resource-heavy and time-consuming attention required of the state if it is to settle actual claims, rather than generic abstractions, in a way

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<sup>8</sup> Interview with Peter Ntshoe, official at the Commission on Restitution of Land Rights, on 6 November 2010.

that benefits claimants in the longer term and addresses real concerns about their impact on local economies. [Walker 2008:23]

In other words, what has been propagated as a success by the numbers, namely the indicatorisation of settlement statistics in South African land restitution in order to enhance service delivery and public accountability, is seen to have actually produced a rather profound failure by the numbers.

### **Settlement Statistics as Boundary Objects**

Such criticism is well taken, highlighting the necessity to provide more adequate and realistic resources for meaningfully finalising all land claims, to rectify unintended consequences of indicatorisation and to improve the quality of national statistics in order to increase public accountability. Yet at the same time, such criticism is unlikely to principally change the importance of settlement statistics, the role of quantification and the production of commensurability that have figured prominently, especially in recent years, in the ways in which the South African state has processed its land claims. In other words, suggesting settling “actual claims”, rather than “generic abstractions”, as Walker puts it in the above quotation, seems to propose a somewhat misleading alternative. Instead, it is precisely *through* generic abstractions that the state has been able to settle actual claims, and settlement statistics have hereby played a crucial role as “boundary objects”.

The notion of boundary objects was first introduced by Susan Leigh Star and James Griesemer:

Boundary objects are objects which are both plastic enough to adapt to local needs and the constraints of the several parties employing them, yet robust enough to maintain a common identity across sites. [...] They have different meanings in different social worlds but their structure is common enough to more than one world to make them recognizable, a means of translation. The creation and management of boundary objects is a key process in developing and maintaining coherence across intersecting social worlds. [Star/Griesemer 1989:393]

South African statistics on land claims can be interpreted as such boundary objects, which occupy the contact zone, or interstitial space, between local and national arenas, allowing for different concerns to be translated and divergent codes to be switched, while still producing sufficient coherence for the overall land restitution process [Rottenburg 2005, 2008 and 2009; Merry 2006a and 2006b].

Thus seen from within the local arena of one concrete land claim, or overlapping and potentially competing claims for the same land, the actual number of these particular claims in need of validation, settlement and finalisation translates a specific concern with individual experiences of injustice into the national arena of rights restoration and reconciliation. As such, this specific figure embodies the constitutional duty of the state, for this particular case, to redress racial dispossessions of the past, and thus operates as a means of downward accountability of the state towards the affected parties. In the course of actually processing this individual case, however, the specific number of claims involved merely functions as the integument, the outer delineation of all the local complexities that, for the time being, are of crucial importance and make up the subject matter of “the case”. Officials engage extensively with the marked specificities of each claim, in alignment with the procedures laid out in the Restitution Act and the Rules of the Commission [Department of Land Affairs 2007b:102-115], ultimately orienting their actions towards the goal of letting the particular number of claims involved jump columns in national statistics from “outstanding” to “settled” and ultimately to “finalised claims”.

At the same time, this peculiar number of land claims processed in the context of one case takes on a quite different life within the national arena of generalised and accumulated land restitution and state performance. Here, through quantification, greatly diverse land claims are stripped of their specificities and treated as commensurable, equitable and thus calculable. In the shape of numbers, concrete land claims are linked directly to other figures, such as the annual state budget for land restitution. In that way, new modes for communicating state action, of monitoring and evidence-based governance become possible, allowing for upward accountability of state performance towards parliament and the public. This may take the format of parliamentary hearings, where – as Themba Ntombela puts it in the above quotation – the commission tries to “create a connection between the money granted and the work done”. Similar processes of retrospectively aligning actual performances with target performances can be observed in the annual reports of the commission [e.g. Commission on Restitution of Land Rights 2011:12]. In this way, quantification comes to operate as a “technology of distance”, as Theodore Porter calls it:

Since the rules for collecting and manipulating numbers are widely shared, they can easily be transported across oceans and continents and used to coordinate activities or settle disputes. Perhaps most crucially, reliance on numbers and quantitative manipulation minimizes the need for intimate

knowledge and personal trust. Quantification is well suited for communication that goes beyond the boundaries of locality and community. A highly disciplined discourse helps to produce knowledge independent of the particular people who make it. [Porter 1995:ix]

The authority of such de-contextualised knowledge is further stabilised by a process of “uncertainty absorption” [March/Simon 1958:155, 166], in the course of which ambiguous and messy information, collected at the bottom of the administrative hierarchy, gets increasingly edited and parsed into apparently robust “facts”, while moving up within the bureaucracy [Espeland/Stevens 2008:421-422]. In that way, complex realities of individual land claims become translated into eventually self-evident numbers, on which officials, members of parliament and the public can count and with which they can work.

The way, in which this heavily quantified national arena of South African land restitution operates, can be further specified in terms of a “meta-code” [Rottenburg 2005]. A meta-code refers to a *modus operandi* that emerges, when participants co-operate under heterogeneous conditions, which creates incentives to bracket undesired complications, minimise factors and information to the absolutely necessary and resort to highly standardised forms of knowledge and procedures in order to get things done [Rottenburg 2005:267-271]. In other words, under the rule of a meta-code, it becomes desirable to stick to “legitimation by procedure”, as Niklas Luhmann [1969] puts it, or to “mechanical objectivity” [Porter 1995:4], where personal restraint, accountability and thus legitimacy is achieved through following intersubjectively agreed standards, rules and procedures.

Such a meta-code is evidently at work within the national restitution arena, where the main concern, to be translated into individual and specific cases, is with the legally correct and just, but also cost-effective and reasonable restitution of land rights by a modern state that is operating under a rational-legal bureaucratic logic [Weber 1978:217-226, 956-1005; Handelman 1995 and 2004:19-42] and, increasingly, within a generalised “audit culture” [Power 1997; Strathern 2000]. Under such conditions, it is indeed of principal importance to produce standardised, quantified and commensurable information on land restitution that is stripped of all potentially complicating specificities, thus allowing to process land claims within the national arena of accountable statehood – and this emphasis on public accountability within the national arena has recently been further enforced through the described processes of indicatorisation. Seen in this light, the meta-code of the national arena seems to constitute not so much a misrepresentation of “actual claims” (as, from the point of view of the local arena, it evidently does) but rather a political and juridical

necessity for making land restitution processible by the South African state in the first place. In other words, settlement statistics as boundary objects have allowed land restitution to be processed in both the local arena of individual injustices and private interests and in the national arena of public accountability and the common good, thus enabling the state to translate, and hence balance, rather divergent concerns by switching between different codes, while simultaneously maintaining the appearance of overall coherence.

## **Conclusion**

Since the beginning of the South African land restitution process in 1994, the national numbers of claims, lodged and settled, have played an important role both for the internal processing by the state of individual claims within local arenas and for negotiating the public accountability of the state within the national arena. I have argued that in this process settlement statistics have come to operate as boundary objects, interlinking both arenas and allowing for mutually translating divergent interests – private and public – into the respective code of the other arena. In recent years, a much more pronounced focus on the national numbers as explicit indicators of state performance has shifted this balance towards a much stronger emphasis on questions of public accountability, service delivery and cost efficiency within the national arena.

As I have shown, such an indicatorisation of South African land restitution has been accompanied with considerable problems regarding the reliability of the numerical data and the danger of not really counting what really counts in highly complex land claims. Furthermore, settlement statistics as explicit indicators were characterised as having a social life of their own, often leading to undesirable, unintended consequences: the prioritisation of easy-to-solve cases, often using Standard Settlement Offers (SSOs) of financial compensation especially in urban claims, at the expense of more difficult (rural) claims, thus letting the difficulties of the latter grow in the meantime; the hasty and too early conclusion of cases without sufficiently taking into account all involved parties, which leads to a much longer and more expensive ultimate settlement (as cases have to be reopened); the too early settlement of cases through sale agreements without having the necessary funding at hand to actually buy the land, leading to vast backlogs of cases and additional cases in court, where the earlier price is renegotiated due to meanwhile massively increased land prices; a

very high staff turnover due to the continuous proclamation that the end of the commission is nigh; and the often poor quality of both data collection and management due to general financial pressures on the work of the commission. Given these problems, for some critics, the recent indicatorisation of land restitution clearly constitutes a failure by the numbers.

On the other hand, it seems undeniable that the growing emphasis on service delivery, cost efficiency and public accountability through indicatorisation has also yielded impressive results: after the shift towards an increased “trust in numbers” [Porter 1995] in the late 1990s, the annual settlement rate drastically accelerated, leading to a situation in which – as of March 2011 – 76,023 out of 79,696 lodged claims are reported as “settled”, i.e. 95.39 per cent (see figure 1). Critics might point out both that these figures for “settled claims” hide the backlog of still not finalised claims and that, as reported above, even the director-general of the Department of Rural Development and Land Reform, Mduduzi Shabane, in April 2011 acknowledged problems with the reliability of these figures. While these points are truly important, one could retort that these worrying facts have only been made visible as “facts” *through* indicatorisation. In other words, while it is evidently not the case that precisely 76,023 out of 79,696 lodged claims were settled in March 2011, it is doubtlessly true that the stronger emphasis in the national arena on public accountability through indicators has indeed massively speeded up the whole process of settling land claims. Furthermore, the explicit need to justify its work in numbers has also forced the commission to come to (numerical) terms with existing backlog claims. In this sense, indicatorisation itself has contributed to making visible and processible in the first place those problems that persist and are, with very good reason, criticised in public. The reliance on rule-bound, standardised and quantified procedures within the state bureaucracy has thus led to both a continuous internal data auditing and to forms of self-correction that informed, among others, the very shift towards indicatorisation in the late 1990s – as Themba Ntombela puts it in the above quotation: “We learn from being in the commission and doing the work we do.”

However, this self-correction is, of course, to a considerable extent self-referential or “autopoietic”, to borrow Luhmann’s [1995:34-36] term. In other words, operating under a rational-legal bureaucratic logic, state officials are limited by that very logic in the ways, in which they can actually change and improve their procedures. As I have argued, shifting towards settling “actual claims”, rather than “generic abstractions” is thus simply not part of

the available options. Instead, the national arena of processing land restitution by necessity relies on a meta-code that values standardised, quantified and commensurable information that can be connected to other numerical proxies (e.g. of state budget) and, thereby, satisfy public demands for evidence-based governance. This is not to say, of course, that the worrying deficiencies in state performance described earlier are negligible or not in need to be addressed, but merely to point out that, one way or the other, quantification is likely to be part of any improvement and “solution”. Obviously, this is also not to say that indicators will always and everywhere improve public accountability and state performance, and thereby lead to a success by the numbers. However, I do argue that, at least in the case of South African land restitution, the recent trend towards indicatorisation has indeed both increased a more publically accountable state performance – under conditions, in which involved parties, including claimants *and* current landowners, are often quite concerned about poor state performance – and made visible and processible in the first place, for the state and the public alike, those disquieting deficiencies that still persist.

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